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December 15, 2020

By ECF

Hon. Analisa Torres
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Branch v. State University of New York, et. al.*, No. 18 Civ. 9516 (AT) (DCF)

Dear Judge Torres:

This Office represents Defendants the State University of New York (“SUNY”) and Dr. Ayman Fanous in the above-referenced matter (collectively, “Defendants”). I write regarding the schedule for the submission of the pre-motion letter in connection with Defendants’ anticipated motion for summary judgment. For the reasons set forth below, Defendants respectfully request that the Court order Plaintiff to submit his Local Rule 56.1 counter-statement by December 21, 2020 or, in the alternative, grant Defendants a four-day extension of time – from January 4, 2021 until January 8, 2021 – to file their pre-motion letter.

Pursuant to Rule III(C) of the Court’s Individual Practices, titled “Special Rules for Summary Judgment Motions,” any party wishing to move for summary judgment shall first provide the opposing party with its Local Rule 56.1 Statement and any evidence cited therein that has not previously been produced in discovery (i.e., declarations). The opposing party must then reproduce each entry in the movant’s 56.1 Statement and set out its response directly beneath it. The movant must then file (and email to the Court) a pre-motion letter setting forth the bases of its anticipated motion and attaching the opposing party’s response to the Rule 56.1 Statement.

On October 13, 2020, the Court adopted a schedule pursuant to which Defendants’ Local Rule 56.1 Statement was due on November 5, 2020, Plaintiffs’ counter-statement was due twelve days later on November 17, 2020, and Defendants’ pre-motion letter was due eight days later on November 25, 2020. See Scheduling Order (ECF No. 144). Defendants submitted their Local Rule 56.1 Statement and accompanying evidence to Plaintiff as scheduled on November 5, 2020. Five days later, on November 10, 2020, Plaintiff filed a certificate of default because Defendants had inadvertently failed to answer his Third Amended Complaint following the Court’s decision on their motion to dismiss. See Proposed Certificate of Default (ECF No. 151). Over Defendants’ objections, Plaintiff then immediately sought an indefinite stay of the deadlines for him to submit his counter-statement and for Defendants to file their pre-motion letter. See Plaintiff’s Stay Request (ECF No. 156). The Court ultimately adjourned the deadline for Defendants to file their pre-motion letter without date. See

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Order (ECF No. 159). Having obtained this adjournment, Plaintiff then promptly agreed to stipulate to the dismissal of the Certificate of Default. See Joint Stipulation (ECF No. 160). Accordingly, the Court ordered Defendants to file their Answer by December 14, 2020 and their pre-motion letter by January 4, 2021. See Orders (ECF Nos. 161-162).

As directed, Defendants filed their Answer to the Third Amended Complaint on December 14, 2020, see Answer (ECF No. 164), and intend to file their pre-motion letter by the January 4, 2021 deadline. However, Plaintiff has advised Defendants that he does not intend to provide them with his counter-statement until December 28, 2020, more than seven weeks after he received Defendants' Rule 56.1 Statement and two weeks after Defendants filed their answer. That is far more time than Plaintiff was allotted under the original schedule. Moreover, December 28, 2020 is the Monday of the short week between Christmas and the New Year. My client, my supervisor, and I will be out of the office for at least part of the week and will not return until January 4, 2021, the day Defendants' pre-motion letter is due. Yet Plaintiff has refused requests to submit the counter-statement on an earlier date.

In light of the foregoing, Defendants respectfully request that the Court order Plaintiff to submit his counter-statement by December 21, 2020 or, in the alternative, grant Defendants a four-day extension of time – until January 8, 2021 – to file their pre-motion letter.

I thank the Court for its attention to this matter.

Respectfully submitted,
/s/ JOHANE SEVERIN
Johane Severin
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GRANTED in part, DENIED in part. By **January 8, 2021**, Defendants shall file their pre-motion letter.

SO ORDERED.

Dated: December 17, 2020
New York, New York



ANALISA TORRES
United States District Judge